

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**THE ARIZONA REPUBLIC, A DIVISION
OF PHOENIX NEWSPAPERS, INC.**

Employer

and

Case 28-RC-6304

**GRAPHIC COMMUNICATIONS INTERNATIONAL
UNION, LOCAL 58-M, AFL-CIO**

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

Pursuant to the Board's Order dated August 27, 2005, remanding this case for my further consideration in light of the Board's decision in *St. Joseph News-Press*, 345 NLRB No. 31 (2005) (*News-Press*), I issue this Supplemental Decision and Direction of Election in the above matter. The issue presented is whether the newspaper carriers are independent contractors or statutory employees within the meaning of Section 2(3) of the Act. Addressing the Board's decision in *News-Press*, I find the facts of *News-Press* to be significantly different from those in this case. These facts include the Employer's carriers' lack of opportunity for any significant entrepreneurial gain or loss; the Employer's exercise of substantial control over carriers' details of work, including the direction and supervision of carrier work; the Employer's providing its carriers with most supplies they need to perform their jobs; and its involvement in providing and administering certain benefits to carriers in a manner absent in *News-Press*. Thus, I adhere to my original determination that the newspaper carriers are statutory employees within the meaning of Section 2(3) of the Act and not independent contractors.

Procedural Background

The Petitioner filed a petition on July 28, 2004, under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of newspaper carriers employed by the Employer in the Phoenix, Arizona metropolitan area. The Employer contended that the petition should have been dismissed because its newspaper carriers are independent contractors and not statutory employees within the meaning of Section 2(3) of the Act. A hearing was held in Phoenix, Arizona, before a hearing officer on August 4, 5, 10, 11, 12, 17, and 18, 2004. I issued my Decision and Direction of Election on September 23, 2004, finding that the newspaper carriers are statutory employees rather than independent contractors and directing an election in the petitioned-for unit. The Board granted the Employer's request for

review of my decision on October 20, 2004. On August 27, 2005, the Board issued a Decision and Order in *News-Press*, finding that the employer's newspaper carriers and haulers were independent contractors rather than statutory employees, and issued an Order Remanding the instant case for my further consideration and issuance of a supplemental decision in light of its *News-Press* decision.

The Board's Decision in *News-Press*

The Board in *News-Press* held that the common law of agency was the appropriate test to determine the distinction between an employee and an independent contractor under Section 2(3) of the Act. The Board rejected the employer's contention that the right-of-control test subsumed all other factors under the common-law agency test and the argument of the union that the common-law agency test should include an analysis of the economic leverage that newspaper carriers bring to the employment relationship in determining whether the Act's purposes would be served by finding independent contractor status. Using its decisions in *Roadway Package System*, 326 NLRB 842 (1998) (*Roadway*), and *Dial-A-Mattress Operating Corp.*, 326 NLRB 884 (1998) (*Dial-A-Mattress*), as guideposts, the Board applied the common-law agency test to the employer's newspaper carriers and found that, on balance, the factors weighed in favor of finding independent contractor status. Section 220(2) of the Restatement (Second) of Agency sets forth a non-exhaustive list of ten factors to consider under the common-law agency test relevant to the employee/independent contractor inquiry: 1) the extent of control which, by the agreement, the master may exercise over the details of the work; 2) whether or not the one employed is engaged in a distinct occupation or business; 3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; 4) the skill required in the particular occupation; 5) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; 6) the length of time for which the person is employed; 7) the method of payment, whether by the time or by the job; 8) whether or not the work is part of the regular business of the employer; 9) whether or not the parties believe they are creating the relation of master and servant; and 10) whether the principal is or is not in the business.

In *News-Press*, the Board found that the following factors weighed in favor of finding independent contractor status for the newspaper carriers: the employer did not exercise substantial control over how the carriers performed their jobs; the employer did not provide supplies to the carriers; the carriers' method of compensation allowed for a degree of entrepreneurial control; carriers performed their duties without the supervision of the employer; and the employer and its carriers believed they were creating an independent contractor relationship. The Board found that the following factors weighed in favor of finding employee status for the newspaper carriers: the carriers' work was an integral part of the employer's business; the carriers did not perform particularly skilled work; carriers were hired for an indefinite length of time; and the carriers' work was similar to the work of other of the employer's employees. Concerning this last factor, the Board noted that although the employer hired some employees to deliver newspapers, which is the same task the carriers performed, the employees only delivered newspapers to customers who failed to receive normal delivery. Therefore, the Board concluded that the employees did similar work, not the

same work, as the employer's carriers. On whole, the Board found the factors in favor of independent contractor status outweighed those factors supporting employee status.

Supplemental Analysis and Conclusion

In my September 23, 2004 Decision and Direction of Election, I found that the Employer's newspaper carriers were employees rather than independent contractors, relying on the following factors which weigh strongly in favor of finding employee status: the Employer exercises substantial control over the work details of carriers, by restricting carriers from engaging in significant entrepreneurial activities, thereby preventing the carriers from incurring any risk of gain or loss; the carriers perform some of their work activities under the supervision of District Managers; the carriers require no specialized training or skills to perform the job; the Employer provides the carriers with most of the supplies needed to perform the job; carriers have worked for the Employer for many years; the Employer's compensation scheme for the carriers provides them with little opportunity for entrepreneurial gain or loss; the Employer is in the business of publishing, printing, and delivering newspapers and the delivery of newspapers is part of the Employer's regular business. I also found that the employees' belief that they were either employees or independent contractors was less probative than the other factors.

In reviewing my decision in light of the Board's teachings in *News-Press*, I find that the facts in the instant case differ from the facts of *News-Press* and lead me to conclude that the Employer's newspaper carriers, unlike the *News-Press* carriers, are employees rather than independent contractors. I find the Employer exercises substantial control over carriers' details of work; the Employer directs and supervises carriers' work; carriers have little opportunity for any significant entrepreneurial gain or loss; the Employer provides its carriers with most supplies needed to perform their jobs; and the Employer is involved in providing and administering certain benefits to its carriers in a manner absent in *News-Press*.

The Employer's Substantial Control over Details of Work

The employer in *News-Press* did not exercise substantial control over how the carriers performed their jobs. For example, *News-Press* carriers received information about new subscriptions, cancellations, or where the customer wanted the newspaper delivered, through daily instructions attached to their newspapers; yet, they were free to change the newspaper delivery order on their routes. In contrast, the Employer's carriers receive specific route sequences, subscriber information, and subscriber special requests via an electronic computer called a Soft Book. They are required to deliver newspapers according to the Soft Book sequence and to follow the special requests noted in the Soft Book. *News-Press* carriers billed some customers directly, and carriers had the discretion to extend credit to a non-paying subscriber or to terminate the subscription for non-payment. In contrast, the Employer's carriers cannot extend credit to any subscribers and cannot terminate any subscriptions for non-payment. The Employer's circulation department, not the carriers, bills the customers. The only exception occurs when a carrier has solicited a new subscription and the new subscriber elects to make the first payment directly to the carrier. After the initial payment, the Employer, not the carriers, bills the new subscriber for all future payments. The Employer

sends field-support representatives, not carriers, to subscribers' residences to pick up payments if subscribers so request. Significantly, *News-Press* carriers had discretion to decide whether to deliver or decline to deliver newspapers under certain conditions. They could choose to refuse to deliver newspapers to new subscribers who lived too far from the carrier's route or whose homes were inaccessible. If the *News-Press* solicited a new subscription from a customer whose subscription a *carrier* had previously terminated for non-payment, the carrier could refuse to deliver to that customer. Unlike *News-Press* carriers, the Employer's carriers are required to deliver newspapers to all customers on the carrier's route regardless of any of the above considerations and to follow the route sequence strictly as defined in the Employer-issued Soft Book.

Carriers' Work Performed under Employer's Direction or Supervision

The Board found that *News-Press* carriers were neither subject to discipline nor subject to an employee handbook or other work rules. In contrast, the Employer's carriers are subject to a progressive discipline system for problems with newspaper deliveries. The discipline the Employer issues ranges from a verbal warning to a written warning to a 30-day notice of termination of the carrier's contract. In addition, the Employer's carriers are subject to a list of rules—part of the carriers' contract with the Employer—applicable at the Employer's distribution centers. These rules prohibit alcohol, drugs, weapons, and pets; establish a dress code; and specify safety and parking rules. The Employer implements other work rules on an ad hoc basis, such as a no-solicitation rule implemented in June 2004. District Managers (DMs) have established work rules that limit some carriers to one route, prohibit pets in carrier vehicles during delivery, and once prohibited a carrier from calling the police following a carrier's car accident with a customer's vehicle. DMs have threatened carriers with loss of contracts if carriers received more than five customer complaints per week, or failed to arrive significantly earlier than the delivery trucks. On one occasion, a carrier refused to deliver a newspaper to a customer who brandished a baseball bat, and a DM threatened him with contract termination. One DM posted notices in the distribution center and told carriers assigned to the early delivery truck that they were required to arrive by 2:00 a.m. at the distribution center or face reassignment to the later main delivery truck.

In addition to implementing work rules for carriers, DMs directly supervise many aspects of Employer carrier work. The Employer routes customer complaints about carriers to DMs, who input complaints into the carriers' Soft Book computer. DMs discuss complaints with carriers, and sometimes drive to customer residences to verify complaints, or follow carriers on their routes. A DM also may assign field-support representatives to follow carriers on their routes and check on their performance. DMs let carriers know if they assemble newspapers too slowly, arrive late at distribution centers, use too many carts, violate dress code, or have a pet in their vehicles. If carriers want to purchase their own Christmas cards to distribute to subscribers, the Employer must pre-approve the cards to assure they are not potentially offensive to religious or nonreligious convictions of customers.

Entrepreneurial Potential and Method of Payment

News-Press carriers could impact their own compensation by hiring full-time substitutes; exercising complete control over the substitutes' terms and conditions of employment; holding contracts on multiple routes; and soliciting new subscriptions. Although the Employer's carriers also can hire substitutes, the DMs, not the carriers, exercise significant control over a substitute's terms and conditions of employment. When using substitutes, carriers provide DMs with the substitute's name, phone number, and the dates of substitution. Most carriers are required to provide this information though some carriers claim they do so as a matter of courtesy. DMs maintain lists of carriers in their district, and many of these lists include the names of substitutes and their telephone numbers. At least two DMs have told carriers that they cannot use the substitutes of their choice. If a carrier or substitute fails to arrive at the distribution center within a DM's determined time frame, the DM calls the carrier, or the substitute, if known, to address the problem.

As to carriers routes, some *News-Press* carriers had multiple routes, although it is not indicated in the decision on what basis *News-Press* carriers were chosen to receive multiple routes. The Employer, however, permits only certain carriers to receive multiple routes with about 20% of the Employer's carriers operating multiple routes. The DMs monitor carriers' performance and will not award more routes to carriers whom they believe do not have sufficient time to deliver more than their current number of assigned routes. Thus, the Employer's carriers are significantly restricted in their entrepreneurial potential through having multiple routes.

The amount received by carriers for soliciting new subscriptions was not indicated in the *News-Press* decision. The Employer's carriers are paid \$15 for each new solicited subscription. Although both *News-Press* and the Employer's carriers compete for new subscribers with dedicated sales teams, only some of the Employer's carriers have access to the same special subscription offers as the sales teams. The income the Employer's carriers receive from the solicitation of new subscriptions is only a small fraction of their income, and only 40% of all carriers sell any new subscriptions at all. Of carriers who do sell subscriptions, the Employer estimates that each carrier sells about 12 new subscriptions per contract. The duration of a carrier contract is typically three or six months and may be one year for more experienced carriers. A carrier with a contract three-months in duration, would receive \$60 per month (\$15 per new subscription) from the sale of new subscriptions. Given that carriers earn about \$800 every four weeks from the delivery of newspapers, that carrier's new subscription income would amount to about 7.5% of the carrier's newspaper delivery pay. Using the same subscription per contract average, a carrier with a contract six-months in duration would receive \$30 per month from the sale of new subscriptions, and the carrier's new subscription income would be about 3.8% of the carrier's pay. A carrier with a contract one-year in duration would receive \$15 per month from the sale of new subscriptions, and the carrier's new subscription income would be about 1.9% of the carrier's pay.

If the Employer's carrier solicits a new subscriber outside his or her geographical route area, the new subscriber is not assigned to the carrier, and thus receives no continuing revenue for his or her efforts. Rather, the carrier who is assigned to the route that covers the

new subscriber's location delivers to the new subscriber, and receives the resultant revenue from the subscription. It is not clear whether a *News-Press* carrier who solicited a new subscriber outside the carrier's geographical route area had the option to deliver to the new subscriber. However, some *News-Press* carriers did deliver to racks or dealers located within another carrier's route. To the extent that *News-Press* carriers delivered to new subscribers solicited within another carrier's geographical area, *News-Press* carriers had a greater incentive than the Employer's carriers to solicit new customers in a broader geographical area.

News-Press carriers had a greater degree of entrepreneurial discretion inasmuch as they had the option of redelivering a missed or damaged newspaper. If they did not redeliver, the *News-Press* delivered the newspaper and charged carriers for the delivery. In contrast, the Employer does not charge carriers for missed or damaged newspapers and will redeliver the newspaper if feasible.

Provision of Supplies, Instrumentalities, and Places of Work

The Board found that the *News-Press* carriers provide their own vehicles necessary to perform the work at issue. Although carriers for both the *News-Press* and Employer provide their own vehicles for newspaper delivery, the Employer provides to carriers critical supplies that are necessary to perform the work at issue. Unlike the *News-Press*, for example, the Employer imposes on its carriers requirements concerning plastic bags and rubber bands and provides some plastic bags free of charge to carriers. The Employer requires its carriers to bag non-*Arizona Republic* newspapers and to do so in color-coded bags provided at no cost to the carriers; to bag all newspapers when the Employer determines it may rain, in bags provided at no cost to the carriers; and to bag any newspaper if the customer so requests, in which case the carrier must purchase the bags. In other circumstances, the Employer's carriers can choose to bag newspapers or not to do so, but are required to purchase Employer bags if they choose to use bags. One carrier sought to use less expensive plastic bags purchased from another source but was prohibited from doing so. The Employer's carriers also choose whether to use rubber bands to bind newspapers. In this case, they may purchase rubber bands from the Employer or another source. The Employer keeps bags and rubber bands available in storage areas at its distribution centers where carriers receive their newspapers. At these distribution centers, the Employer provides Soft Books, assigned route tables, and downloading facilities for Soft Books. The *News-Press* did not provide any of these items to its carriers, except *News-Press* sold supplies such as plastic bags and rubber bands to carriers.

Intent of Employer and Carrier Regarding the Nature of Their Relationship

In *News-Press*, the Board weighed the parties' belief that they were creating an independent contractor relationship heavily in favor of finding independent contractor status. Evidence of this belief was contained in the language of *News-Press* contracts that specified the parties creation of an independent contractor relationship, and in the carriers' ineligibility for any of the *News-Press* employee programs. As to the language in the contract, like *News-Press* contracts, Employer carrier contracts specify that they are independent contractors.

Although it is unclear whether *News-Press* carriers could negotiate about the provision in the *News-Press* contracts that declared them to be independent contractors, this contract provision is non-negotiable for the Employer's carriers. In addition, between 25% and 50% of carriers at some distribution centers are Spanish-only speakers, and carrier contracts are written in English only. These factors suggest that the Employer's carriers are labeled as independent contractors, but carriers had no choice in the matter.

In contrast to *News-Press* carriers' ineligibility for participation in employee benefit programs, the Employer does offer its carriers a significant insurance benefit. While the Employer does not offer its carriers the same benefits it offers to its employees, it does offer carriers, usually at the time carriers sign contracts, the opportunity to purchase one of two insurance policies through an independent insurance carrier covering medical expenses as well as disability and death benefits as a result of accidents. The Employer participates in the administration of this benefit by deducting weekly premiums of either \$1.25 or \$1.75 directly from the carrier's pay. None of the carriers who selected this insurance received a copy of the policy or an explanation about the policy. However, the Employer participates in the claims process by furnishing claim forms through the DMs upon request of the carriers.

The Employer's Carriers Resemble *Roadway Drivers* More than *Dial-A-Mattress Drivers*

In *News-Press* the Board compared the common law of agency factors present in *News-Press* with the factors in *Roadway* and *Dial-A-Mattress* to conclude that, on balance, the *News-Press* carriers were independent contractors. In the instant case, however, Employer's carriers more closely resemble the drivers in *Roadway* whom the Board found to be employees rather than the drivers in *Dial-A-Mattress* whom the Board found to be independent contractors. In *Roadway*, the Board applied the common-law agency test and held that the drivers, who delivered and picked up packages were statutory employees:

As in *United Insurance* [*NLRB v. United Insurance Co. of America*, 390 U.S. 254 (1968)], the drivers here do not operate independent businesses, but perform functions that are an essential part of the company's normal operations; they need not have any prior training or experience, but receive training from the company; they do business in the company's name with assistance and guidance from it; they do not ordinarily engage in outside business; they constitute an integral part of the company's business under its substantial control; they have no substantial proprietary interest beyond their investment in their trucks; and they have no significant entrepreneurial opportunity for gain or loss. *Supra*, 326 NLRB at 851.

These factors apply to the Employer's carriers as well. Carriers do not operate an independent business; rather, they deliver newspapers, an essential part of Employer operations. The Employer does not require any prior training or experience for the carriers, and none is necessary. Carriers receive training on how to use the Soft Book and how to drive their routes from DMs. The Employer substantially controls, assists, and guides the carriers in many performance aspects of their jobs. Like the *Roadway* drivers, for example, to whom the Employer assigned primary service areas and who could not refuse to accept merchandise

for pick-up or delivery in these areas, the Employer's carriers cannot refuse to deliver newspapers in their assigned geographical route area. Like the *Roadway* drivers, whom the employer required to use an electronic device to transmit information about pick ups and deliveries, the Employer's carriers are required to follow the Soft Book's sequence of delivery on their routes. Carriers do business as the Employer's newspaper carriers even though their contracts do not permit them to identify their vehicles as being associated with the Employer.

The Employer's carriers do not ordinarily engage in outside business; very few deliver competing newspapers on their routes. Carriers have little substantial proprietary interest beyond their vehicle investment, and the Employer compensation scheme offers carriers little entrepreneurial opportunity for gain or loss. Certain facts suggest that the *Roadway* drivers are closer to independent contractor status than the Employer's carriers. For instance, *Roadway* drivers could use helpers or replacement drivers on their routes without prior approval from Roadway, whereas the Employer, through DMs, sometimes controls the selection of substitutes, keeps lists of substitutes, and apparently requires carriers to submit to DMs the dates when substitutes will replace carriers. In addition, in contrast to the Employer's carriers, *Roadway* drivers were not subject to a discipline system. Furthermore, unlike the employer in *Roadway*, who did not set a particular starting time for the drivers, the Employer requires its carriers to arrive at a certain time at the distribution centers to pick up newspapers. The *Roadway* drivers' contract also gave them a proprietary interest in their service areas and the right to sell their service. The Board found, however, that the employer controlled and limited this right. The Employer's carriers have an even more Employer-controlled and limited proprietary interest in their routes.

Employer's carriers bear little resemblance to the *Dial-A-Mattress* drivers. *Dial-A-Mattress* drivers were owner-operators who owned their own trucking companies: one owner-operator owned ten trucks; two others owned six trucks; and six others owned two trucks. At least three of the drivers acted solely as entrepreneurs and did not even drive. The Board in *Dial-A-Mattress* applied the common-law agency test and held that the drivers were independent contractors:

Applying the common-law agency test to the facts of this case, we find that the factors weigh more strongly in favor of independent contractor status for Dial's owner-operators. In the process of outsourcing its delivery functions, Dial has structured its relationship with the owner-operators to allow them (with very little external controls) to make an entrepreneurial profit beyond a return on their labor and their capital investment. The owner-operators arrange their own training, hire their own employees, and have sole control over and complete responsibility for their employees, including setting their terms and conditions of employment. Dial also plays no part in the selection, acquisition, ownership, financing, inspection, or maintenance of the vehicles used by the owner-operators. There is no minimum compensation guaranteed the owner-operators to minimize their risk of performing deliveries for Dial, and they can decline orders without penalty. The owner-operators are not required to provide delivery services each scheduled workday. In short, their separateness from Dial is manifested in many ways, including significant entrepreneurial opportunity for gain or loss.

The owner-operators have a separate identity from Dial that suggests independent contractor status. They have formed their own trucking companies and have filed applications with the state to transport Dial's products. Many have state business certificates for their companies, while several of them function in the corporate form. The owner-operators maintain business checking accounts, often have their own company work uniforms, and file corporate tax returns. They also maintain workers' compensation insurance and have business tax identification numbers. *Supra*, 326 NLRB at 891.

Unlike *Dial-A-Mattress* drivers, the Employer's carriers have little opportunity for entrepreneurial gain or loss. Some carriers use substitutes, but unlike the employer in *Dial-A-Mattress*, the Employer herein exercises significant control over substitutes. The Employer's carriers are required to deliver newspapers every day of the year and cannot decline to deliver newspapers in their assigned route area. Only three of approximately 1,262 carriers have formed business associations, and carriers do not provide workers' compensation insurance. Unlike the Employer's carriers, *Dial-A-Mattress* drivers were assigned different geographical areas for delivery and were not required to follow a certain route on their deliveries. Unlike the Employer's carriers, *Dial-A-Mattress* drivers collected payment from customers and bore the risk of loss if a customer's payment method was disapproved. Moreover, the record provides no evidence that there is any opportunity to make an entrepreneurial profit beyond a return on their labor and their capital investment.

In sum, after further analyzing the facts of this case based on the Board's remand and instruction to take into account its recent holding in *News-Press*, I reaffirm my conclusion that the Employer has failed to meet the burden of establishing that the carriers are independent contractors. Accordingly, I conclude that the carriers are employees within the meaning of Section 2(3) of the Act and should enjoy all of the rights and protections of the Act.

As I have earlier found, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All contracted home delivery newspaper carriers employed by the Employer operating out of its Phoenix, Arizona metropolitan area distribution centers, including those designated as Areas 80 through 88, inclusive and currently located at: Sun City (13333 West Bell Road, Surprise, Arizona); West Phoenix (4931 West Brill, Phoenix, Arizona); North Phoenix (21615 North 7th Avenue, Phoenix, Arizona); Union Hills, (18808 North 32nd Street, Phoenix, Arizona); South Phoenix (2601 East Magnolia, Phoenix, Arizona); Scottsdale (7881 East Gray, Scottsdale, Arizona); Tempe (8420 South Hardy, Tempe, Arizona); Gilbert (455 East Baseline Road, Mesa, Arizona); and Mesa (7444 East Hampton, Mesa, Arizona).

EXCLUDED: All other employees employed by the Employer, managers, clerical employees, substitute carriers, street salespersons, guards, and supervisors as defined in the Act.

There are approximately 1,262 employees in the unit found appropriate.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Supplemental Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 58-M, AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Supplemental Decision, the Employer file with me, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. I will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, I must receive the list at the National Labor Relations Board, Region 28, 2600 North Central Ave. Suite 1800, Phoenix, Arizona 85004-3099, on or before November 10, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

REQUEST FOR REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by November 17, 2005. A copy of the request for review should also be served on me.

Dated at Phoenix, Arizona, this 3rd day of November 2005.

Cornele A. Overstreet, Regional Director
National Labor Relations Board